

HOUSE BILL 19

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Q6
HB 557/02 - W&M

2003 Regular Session
3lr0477
CF 3lr0258

By: **Delegates Healey, Hixson, Bozman, Heller, Conroy, C. Davis, Bobo,
Gordon, and Howard**

Introduced and read first time: January 10, 2003

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes - Transfers of Controlling Interests**

3 FOR the purpose of imposing recordation and transfer taxes on the transfer of
4 controlling interest in certain entities owning certain interests in real property
5 in Maryland; requiring the filing of a certain report; providing for a filing fee;
6 establishing the rate of taxation and the method of calculation of tax liability;
7 exempting certain transfers; providing for interest and a penalty for certain
8 filings; requiring the Department of Assessments and Taxation to adopt certain
9 regulations; defining certain terms; providing for a delayed effective date;
10 requiring the Department of Assessments and Taxation to deduct and credit
11 certain revenues to a certain fund; and generally relating to the taxation of
12 transfers of controlling interests in certain entities.

13 BY repealing and reenacting, with amendments,
14 Article - Tax - Property
15 Section 12-110(d) and 13-209(a)
16 Annotated Code of Maryland
17 (2001 Replacement Volume and 2002 Supplement)

18 BY adding to
19 Article - Tax - Property
20 Section 12-116 and 13-103
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2002 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Tax - Property

2 12-110.

3 (d) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
4 THE RECORDATION TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND
5 CREDIT THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
6 CORPORATIONS AND ASSOCIATIONS ARTICLE.

7 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
8 PARAGRAPH (1) OF THIS SUBSECTION, THE recordation tax collected under [§
9 12-103(d)] §§ 12-103(D) AND 12-116 of this title shall be paid to the Comptroller.
10 [After deduction of the cost to the Department of collecting the tax, the] THE
11 Comptroller shall distribute the revenue to the counties in the ratio that the
12 recordation tax collected in the prior fiscal year in each county bears to the total
13 recordation tax collected in all counties in that year.

14 12-116.

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (2) "CONTROLLING INTEREST" MEANS:

18 (I) MORE THAN 80% OF THE TOTAL VALUE OF ALL CLASSES OF
19 STOCK OF A CORPORATION;

20 (II) MORE THAN 80% OF THE TOTAL INTEREST IN CAPITAL AND
21 PROFITS OF A PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER
22 UNINCORPORATED FORM OF DOING BUSINESS; OR

23 (III) MORE THAN 80% OF THE BENEFICIAL INTEREST IN A TRUST.

24 (3) "FINAL TRANSFER" MEANS THAT TRANSFER OF ANY PORTION OF A
25 CONTROLLING INTEREST WHICH COMPLETES THE TRANSFER OF A CONTROLLING
26 INTEREST IN A REAL PROPERTY ENTITY.

27 (4) (I) "PLAN OF TRANSFER" MEANS AN INTENTIONAL PLAN OR
28 PROGRAM TO TRANSFER THE CONTROLLING INTEREST IN A REAL PROPERTY ENTITY.

29 (II) "PLAN OF TRANSFER" DOES NOT INCLUDE A SERIES OF SALES
30 OF SHARES OF A PUBLICLY TRADED ENTITY.

31 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE
32 STATE.

33 (II) "REAL PROPERTY" DOES NOT INCLUDE:

34 1. A LEASEHOLD, UNLESS CREATED BY A LEASE THAT IS
35 REQUIRED TO BE RECORDED UNDER § 3-101(A) OF THE REAL PROPERTY ARTICLE; OR

1 REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE AMOUNT OF ANY
2 CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN REAL PROPERTY REFERRED
3 TO IN SUBPARAGRAPH (III) OF THIS PARAGRAPH.

4 (V) IF THE REAL PROPERTY ENTITY FAILS TO ESTABLISH THE
5 AMOUNT OF CONSIDERATION REFERRED TO IN SUBPARAGRAPH (I) OF THIS
6 PARAGRAPH, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE REAL
7 PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY
8 DETERMINED BY THE DEPARTMENT AT THE DATE OF FINALITY IMMEDIATELY
9 BEFORE THE DATE OF THE FINAL TRANSFER.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN § 12-103(D) OF THIS SUBTITLE,
11 THE RECORDATION TAX IS APPLIED AT THE RATE SET UNDER § 12-103(B) OF THIS
12 SUBTITLE BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

13 (C) (1) THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY
14 ENTITY IS NOT SUBJECT TO RECORDATION TAX IF THE TRANSFER OF THE REAL
15 PROPERTY BY AN INSTRUMENT OF WRITING BETWEEN THE SAME PARTIES AND
16 UNDER THE SAME CIRCUMSTANCES WOULD HAVE BEEN EXEMPT UNDER § 12-108 OF
17 THIS SUBTITLE.

18 (2) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
19 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY EFFECTED IN MORE THAN
20 ONE TRANSACTION IF:

21 (I) THE TRANSFER IS COMPLETED OVER A PERIOD OF MORE THAN
22 12 MONTHS; OR

23 (II) THE TRANSFER IS NOT MADE IN ACCORDANCE WITH A PLAN OF
24 TRANSFER.

25 (3) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
26 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO ANOTHER BUSINESS IF
27 THE OWNERSHIP INTERESTS IN THE TRANSFEREE BUSINESS ENTITY ARE HELD BY
28 THE SAME PERSONS AND IN THE SAME PROPORTION AS IN THE REAL PROPERTY
29 ENTITY THE CONTROLLING INTEREST OF WHICH WAS TRANSFERRED.

30 (4) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
31 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF EACH TRANSFEROR, EACH
32 TRANSFEREE, AND EACH REAL PROPERTY ENTITY IS:

33 (I) A SUBSIDIARY CORPORATION, ALL OF THE STOCK OF WHICH IS
34 OWNED, DIRECTLY OR INDIRECTLY, BY A COMMON PARENT CORPORATION;

35 (II) A PARTNERSHIP, ALL OF THE INTERESTS IN WHICH ARE
36 OWNED, DIRECTLY OR INDIRECTLY, BY ONE OR MORE SUBSIDIARIES OR THE
37 COMMON PARENT CORPORATION; OR

38 (III) THE COMMON PARENT CORPORATION.

1 (5) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
2 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF THE TRANSFEREE OF THE
3 CONTROLLING INTEREST IN THE REAL PROPERTY ENTITY IS:

4 (I) A NONSTOCK CORPORATION ORGANIZED UNDER TITLE 5,
5 SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; AND

6 (II) REGISTERED WITH THE DEPARTMENT OF AGING AS A
7 CONTINUING CARE RETIREMENT COMMUNITY UNDER ARTICLE 70B, § 9 OF THE CODE.

8 (6) THE REAL PROPERTY ENTITY HAS THE BURDEN OF ESTABLISHING
9 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF ANY
10 EXEMPTION REFERRED TO IN PARAGRAPHS (1) THROUGH (5) OF THIS SUBSECTION.

11 (D) (1) THE REAL PROPERTY ENTITY SHALL FILE WITH THE DEPARTMENT A
12 REPORT OF ANY TRANSFER OF A CONTROLLING INTEREST IN THE REAL PROPERTY
13 ENTITY THAT IS COMPLETED WITHIN A PERIOD OF 12 MONTHS OR LESS WITHIN 30
14 DAYS FOLLOWING THE DATE OF THE FINAL TRANSFER.

15 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
16 THE SATISFACTION OF THE DEPARTMENT:

17 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I) OF
18 THIS SECTION;

19 (II) THE AMOUNT OF ASSETS OTHER THAN REAL ESTATE
20 REFERRED TO IN SUBSECTION (B)(2)(II) OF THIS SECTION; AND

21 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C) OF THIS
22 SECTION.

23 (3) THE REPORT SHALL BE ACCOMPANIED BY PAYMENT OF:

24 (I) A \$20 FILING FEE; AND

25 (II) ANY TAX, INTEREST, AND PENALTY THAT IS DUE.

26 (E) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
27 DAYS AFTER THE DATE OF THE FINAL TRANSFER, THEN:

28 (I) INTEREST ON THE UNPAID AMOUNT SHALL ACCRUE
29 THEREAFTER AT THE RATE OF 1% PER MONTH; AND

30 (II) A PENALTY OF 10% OF THE UNPAID AMOUNT SHALL BE DUE.

31 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION IS AN
32 OBLIGATION OF THE REAL PROPERTY ENTITY.

33 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
34 IMPOSITION OF INTEREST OR PENALTY.

1 (F) THIS SECTION DOES NOT APPLY TO:

2 (1) A PLEDGE OF STOCK OR OTHER INTEREST IN A REAL PROPERTY
3 ENTITY AS SECURITY FOR A LOAN; OR

4 (2) THE ADMISSION TO THE REAL PROPERTY ENTITY OF ADDITIONAL
5 SHAREHOLDERS, PARTNERS, BENEFICIAL OWNERS, OR OTHER MEMBERS INCIDENT
6 TO THE RAISING OF ADDITIONAL CAPITAL THROUGH A PUBLIC OR PRIVATE
7 OFFERING OF STOCK OR OTHER INTERESTS IN THE REAL PROPERTY ENTITY IF:

8 (I) THE EFFECTIVE MANAGEMENT OF THE REAL PROPERTY
9 ENTITY IS NOT SUBSTANTIALLY CHANGED; AND

10 (II) UNDER THE TERMS OF THE OFFERING, NONE OF THE NEW
11 MEMBERS IS EXPECTED TO PARTICIPATE IN THE DAY-TO-DAY MANAGEMENT OF THE
12 REAL PROPERTY ENTITY.

13 (G) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER
14 THIS SECTION.

15 (2) THE REGULATIONS SHALL INCLUDE ANY ADDITIONAL STANDARDS
16 AND EXEMPTIONS TO ASSURE THAT:

17 (I) A TAX IS IMPOSED WHEN A TRANSACTION IS STRUCTURED
18 INVOLVING A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO AVOID
19 PAYMENT OF THE RECORDATION TAX;

20 (II) EXEMPTIONS PROVIDED BY LAW WHEN REAL PROPERTY IS
21 TRANSFERRED BY AN INSTRUMENT OF WRITING ARE APPLICABLE; AND

22 (III) THERE IS NO DOUBLE TAXATION OF A SINGLE TRANSACTION.

23 13-103.

24 (A) IN THIS SECTION, "CONTROLLING INTEREST", "REAL PROPERTY", AND
25 "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN § 12-116 OF THIS
26 ARTICLE.

27 (B) (1) THE TAXES UNDER THIS TITLE ARE IMPOSED ON THE TRANSFER OF
28 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY
29 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY WERE
30 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
31 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
32 13-202 OF THIS TITLE.

33 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE
34 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN
35 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY DIRECTLY
36 OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS PROVIDED IN §
37 12-116(B)(2) OF THIS ARTICLE.

1 (3) (I) EXCEPT FOR THE COUNTY TRANSFER TAX, THE TAXES UNDER
2 THIS SECTION SHALL BE APPLIED AT THE RATES ESTABLISHED IN THIS TITLE.

3 (II) THE COUNTY TRANSFER TAX SHALL BE APPLIED AT THE RATE
4 IMPOSED BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

5 (C) THE TAXES UNDER THIS TITLE ARE NOT IMPOSED ON THE TRANSFER OF A
6 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
7 CIRCUMSTANCES DESCRIBED:

8 (1) IN § 13-207 OF THIS TITLE THAT EXEMPTS AN INSTRUMENT OF
9 WRITING FROM THE TRANSFER TAX; OR

10 (2) IN § 12-116(C) OF THIS ARTICLE THAT EXEMPTS THE TRANSFER OF A
11 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY FROM THE RECORDATION
12 TAX.

13 (D) IN EACH INSTANCE IN WHICH A CONTROLLING INTEREST IN A REAL
14 PROPERTY ENTITY IS TRANSFERRED, THE PROVISIONS OF § 12-116(D) AND (E) OF THIS
15 ARTICLE ARE APPLICABLE.

16 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §
17 12-116(F) OF THIS ARTICLE.

18 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS
19 SECTION IN THE SAME MANNER AS IN § 12-116(G) OF THIS ARTICLE.

20 13-209.

21 (a) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
22 THE TRANSFER TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND CREDIT
23 THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
24 CORPORATIONS AND ASSOCIATIONS ARTICLE.

25 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
26 PARAGRAPH (1) OF THIS SUBSECTION, THE revenue from transfer tax is payable to
27 the Comptroller for deposit in a special fund.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 January 1, 2004.